

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1272

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

To be argued by
BARRY BASSIS

UNITED STATES OF AMERICA,
Appellee,

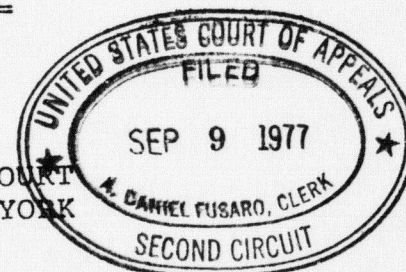
-against-

CELEDONIA MORALES,
Appellant.

Bp/s
Docket No. 77-1272

APPENDIX FOR APPELLANT
CELEDONIA MORALES

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



MARTIN ERDMANN, ESQ.,
THE LEGAL AID SOCIETY
Attorney for Appellant
CELEDONIA MORALES
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

BARRY BASSIS,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

JUDGE/MAGISTRATE ASSIGNED	U.S. DISTRICT COURT	Case Filed Mo Day	77	121	Def
0720	297	1	3	4	2
CELEDONIA MORALES (LAST, FIRST, MIDDLE)		JUVENILE			

U.S. TITLE/SECTION 21:841(a)(1) 18:2
OFFENSES CHARGED Did unlawfully possess with intent to distribute heroin, etc. 1
ORIGINAL COUNTS

U.S. MAG. CASE NO. 77 M 527

BAIL - RELEASE

☐ Denied	☐ AMT	☐ Fugitive
☐ Set	☐ Pers. Recog.	☐ PSA
\$250.00	conditions	
Date	☐ 10% Deposit	☒ Surety Bond
☐ Bail Not Made	☐ Collateral	☐ 3rd Party Cust
☒ Status Changed (See Docket)	☐ Other	

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began	INDICTMENT ☒ High Risk Date Information ☐ 3-4-77	ARRAIGNMENT 3/11/77 1st Plea Final Plea	TRIAL Trial Set For Voor Dire Trial Began Trial Ended	SENTENCE Disposition of Charges 5/22/77
Summons Served	Indict. Waived In Charging District	Superseding ☐ Indict/Info	☒ NG ☐ G ☐ NOL ☐ G Plea ☐ W/Drawn ☐ NG ☐ G ☐ NOL	☐ On All Charges ☐ On Lesser Offense(s) ☐ Dismissed: ☐ WOP: ☐ WP ☐ On Government's Motion

Search Warrant	Issued	DATE	INITIAL/NO.	INITIAL APPEARANCE DATE	INITIAL/NO.	OUTCOME
Summons	Issued			PRELIMINARY EXAMINATION		☐ DISMISSED
Arrest Warrant Issued	Served			OR		☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
COMPLAINT		2-26-77	VAC/07AA	REMOVAL HEARING	2-28-77	☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
OFFENSE (In Complaint)				☐ WAIVED ☐ NOT WAIVED		ASC 07AE
				☒ INTERVENING INDICTMENT		Possession with intent to distribute heroin. T-21 USC Section 841

U.S. Attorney or Asst.

Russo

Russo
Teller

ATTORNEYS: Defense: ☐ CJA ☐ Ret. ☐ Waived ☐ Self ☐ None / Other: ☐ PD ☐ CD
will get own atty.

Paul Lieber, Esq.
86 Clinton Street
Brooklyn, New York (228-3322)

Show last names and suffix numbers of other defendants on same indictment/information:

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
2-28-77		Bail not reduced. Case adjourned to March 7, 1977 at 2:00 PM	
3-2-77		Bail reduced to \$50,000 Surety.	
3-4-77		Before CHREIN J - Indictment filed.	
3.7.77		Before Platt, J.- Case Called. Deft not present. Counsel present. Deft's. motion for Reduction of Bail - denied. Adj. to 3.11.77 at 10:00 A.M. for Pleading.	
3-11-77		Before Platt, J - case called - deft & atty present - Deft waives reading of the indictment and enters a plea of not guilty - defts motion for reduction of bail is denied - Bail \$50000 contd - adjd to 3-25-77 for all purposes. Jack Teabout sworn as interpreter.	
3/15/77		Notice of readiness for trial filed.	
3/25/77		Notice of motion for suppression of oral and physical evidence and notice of motion for a bill of particulars and discovery filed, returnable 4/1/77 at 11:30 a.m.	

(DOCUMENT NO.)

125/77 Notice of motion filed seeking relief for suppression of physical evidence, suppression of oral statement, etc.

1.77 Before Platt, J. - Case Called. Deft. & Counsel present. Deft's. motion to suppress adjd. to day of Trial. Deft's. motion for enlargement of bail limits argued and withdrawn. Trial set down for 4.5.77 at 9:30 A.M.

4-5-77 Before Platt, J - case called - deft & counsel present - hearing ordered and begun on motion to suppress - motion denied - adjd to 4-6-77 at 9:30 am for trial

4-6-77 Before Platt, J - case called - deft & atty present - Pre Trial hearing ordered and begun - hearing concluded. Jurors selected and sworn - trial contd to 4-7-77.

4-7-77 Before Platt, J - Case called - deft & counsel present - trial resumed - Defts motion to dismiss denied - at 2:20 PM Jury returns with a verdict of guilty on the one count of the Indictment - defts motion reserved to date of sentence. Bail contd - and bail hearing set down for 4-13-77 at 9:30 am. Trial concluded. Jury is excused with the thanks of the Court.

11.77 Stenographer's Transcript dated April 1, 1977 filed.

12/77 Letter filed to Judge Platt from Mel Sachs, re: re scheduling of suppression hearing; letter forwarded to chambers.

4-13-77 By Platt, J- Order of sustenance filed.

4-13-77 Before Platt, J - case called - deft & counsel present - Interpreter Sylvia Waltzer sworn as interpreter - defts motion to enlarge bail limits to and including the Northern District of Ill. denied.

18/77 Stenographers transcript dated 4/5/77 filed

20/77 Before Platt, J-dase called-ddeft & counsel present- Deft's motion set aside verdict-denied-deft sentence for impri for a term of 12 years and that the deft shall become eligible parole under T 18 4205(b)(2) at such time as the Parole Comm may determine-Deft is also sentenced to a special Parole term of 10 years-execution of sentence is stayed pending appeal-Bail contd. Status report re:Appeal set down for 5/31/77.jlj

20/77 Judgment & commitment filed. Certified copies to Marshal & Prob.jlj

20/77 Notice of appeal filed. Parties notified.jlj

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

CELEDONIA MORALES and
ANNA MENDEZ,

FILED
IN CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.

I N D I C T M E N T

Cr. No. _____
(T. 21, U.S.C., §841(a) (1)
and T. 18, U.S.C. §2)

Defendants. ★ MAR 4 1977 ★

----- TIME A.M.
P.M.

THE GRAND JURY CHARGES:

On or about the 25th day of February, 1977, within the Eastern District of New York, the defendants, CELEDONIA MORALES and ANNA MENDEZ, did knowingly and unlawfully possess with intent to distribute a quantity of heroin hydrochloride, a schedule I narcotic controlled substance. (Title 21, United States Code, Section 841(a) (1); Title 18, United States Code, Section 2.)

A TRUE BILL

Donald H. Walker
FOREMAN

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
Eastern District Of New York

5 (Jury seated.)

6 THE COURT: Now, ladies and gentlemen, I am
7 going to give you instructions on the law. It's my
8 practice to read the law to you from notes that I have.
9 I realize it makes it more difficult for you to follow
10 them than if I were to give the law to you extemporane-
11 ously. However, by reading it I think I minimize the
12 risk of error and that's important. I beg your
13 indulgence and ask you to bear with me.

14 While I read the instructions if my voice starts
15 to fall, or any of you can't hear any portion of it,
16 let me know; give me a call, or wave or something to
17 me so you do hear all of the instructions.

18 Now that you have heard the evidence and the
19 arguments, it becomes my duty to give you the instruct-
20 ions of the Court as to the law applicable to the case.
21 It is your duty as jurors to follow the law as stated
22 in the instructions of the Court and to apply the
23 rules of law so given to the facts as you find them
24 from the evidence in the case.

25 You are not to single out one instruction alone

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2 as stating the law, but must consider the instructions
3 as a whole. Neither are you to be concerned with the
4 wisdom of any rule of law stated by the Court. Regard-
5 less of any opinion you may have as to what the law
6 ought to be, it would be a violation of your sworn duty
7 to base a verdict upon any other view of the law than
8 that given in the instructions of the Court; just as
9 it would be a violation of your sworn duty as judges
10 of the fact to base a verdict upon anything but the
11 evidence in the case.

12 You must not let yourselves be governed by
13 sympathy, bias, prejudice or any other consideration
14 not founded on evidence and these instructions on the
15 law.

16 Justice through trial by jury must always depend
17 upon the willingness of each individual juror to seek
18 the truth as to the facts from the same evidence pre-
19 sented to all the jurors, and to arrive at a verdict
20 by applying the same rules of law as given in these
21 instructions of the Court.

22 You have been chosen and sworn as jurors in
23 this case to try the issues of fact presented by the
24 allegations of the indictment and the denial made by
25 the "Not Guilty" plea of the accused. You are to per-

1 form this duty without bias or prejudice to any party.
2 Again, the law does not permit jurors to be governed by
3 sympathy, prejudice or public opinion.
4

5 Both the accused and the public expect that you
6 will carefully and impartially consider all of the evi-
7 dence in the case, follow the law as stated by the Court
8 and reach a just verdict, regardless of the consequences.

9 Now, I am not going to send the exhibits which
10 have been received in evidence with you as you retire
11 for your deliberations. You are entitled, however, to
12 see any and all of the exhibits as you consider your
13 verdict.

14 I suggest that you begin your deliberations and
15 then if it would be helpful to you, you may ask for
16 any or all of the exhibits simply by sending a note
17 to me through one of the deputy marshals who will be
18 stationed outside your jury room door.

19 Similarly, there has been reference to the
20 possibility of having testimony read back. You may,
21 if you deem it necessary, request a portion of, or a
22 particular witness' testimony to be read back. However,
23 as you are required to view the instructions on the
24 law as a whole, so also, you are required to view the
25 facts as a whole. If you request a portion of a parti-
cular witness' testimony to be read back, you are going

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2 to highlight that testimony in your minds and perhaps
3 give it more weight than it might otherwise have gotten
4 and deserve. Accordingly, I instruct you to attempt,
5 at least in the first instance, to give it a good,
6 honest try to consider the evidence as a whole, before
7 reaching the point where you ask for a portion of a
8 witness' testimony read back.

9 An indictment is but a form or method of accus-
10 ing a defendant of a crime. It is not evidence of any
11 kind against the accused.

12 There are two types of evidence from which a jury
13 may properly find a defendant guilty of a crime.
14 One is direct evidence, such as the testimony of an
15 eye-witness. The other is circumstantial evidence, i.e.,
16 the proof of fact and circumstances which rationally
17 imply the existence or non-existence of other facts,
18 because such other facts usually follow according to
19 the common experience of man kind. For example, the
20 foot prints of a man in the sand implied to Robinson
21 Crusoe that there was another man with him on the desert
22 island, and indeed there was, the man Friday.

23 Thus, on the one hand you may have direct evi-
24 dence of an issue, and, on the other hand you may have
25 circumstantial evidence of an issue. The law does not

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2 hold that one type of evidence is necessarily of a better
3 quality than the other. The law requires only that the
4 Government prove its case beyond a reasonable doubt,
5 both on the direct and the circumstantial evidence.

6 At times the jury may feel that circumstantial
7 evidence is of a better quality. At other times they
8 may feel direct evidence is of a better quality. That
9 judgment is left entirely up to you.

10 As a general rule, the law makes no distinction
11 between direct and circumstantial evidence, but, simply
12 requires before convicting a defendant, the jury be
13 satisfied of the defendant's guilt beyond a reasonable
14 doubt from all of the evidence in the case.

15 The law presumes the defendant to be innocent
16 of crime. Thus, the defendant although accused, begins
17 a trial with a clean slate; with no evidence against
18 him, and the law permits nothing but legal evidence pre-
19 sented before the jury to be considered in support of any
20 charges against the accused.

21 So, the presumption of innocence alone is suff-
22 icient to acquit a defendant unless the jury is satis-
23 fied beyond a reasonable doubt of the defendant's guilt,
24 after careful and impartial consideration of all the
25 evidence in the case. The burden is always upon the

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2 prosecution to prove guilt beyond a reasonable doubt.
3 This burden never shifts to the defendant, for the law
4 never imposes upon a defendant in a criminal case the
5 burden of calling any witnesses or producing any evidence.
6

7 A reasonable doubt does not mean a doubt arbitrarily
8 and capriciously asserted by a juror because of his
9 or her reluctance to perform an unpleasant task.

10 It does not mean a doubt arising from a natural sympathy,
11 which we all have, for others. It is not necessary for
12 the Government to prove the guilt of the defendant
13 beyond all possible doubt. If that were the rule,
14 very few people could ever be convicted of anything.
15 It is practically impossible for a person to be absolutely
16 sure and convinced of any controverted fact, which,
17 by its nature, is not susceptible to mathematical
18 certainty. In consequence, the law says a doubt should
19 be a reasonable doubt and not a possible doubt.

20 A reasonable doubt is a doubt based upon reason
21 and common sense, the kind of doubt that would make a
22 reasonable person hesitate to act. Proof beyond a
23 reasonable doubt must, therefore, be proof of such a
24 convincing character that you would be willing to rely
25 and act upon it unhesitatingly in the most important of

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2 your own affairs.

3 The jury will remember that the defendant is never
4 to be convicted on mere suspicion or conjecture. Again,
5 a reasonable doubt means a doubt that is based on
6 reason and must be sufficient to cause a prudent person
7 to hesitate to act in the most important affairs of his
8 or her own life.

9 The requirement of proof beyond a reasonable
10 doubt operates on the whole case and not on separate
11 bits of evidence. Each individual item of evidence
12 need not be proven beyond a reasonable doubt.

13 Now, it is charged in the indictment that on
14 or about the 25th day of February, 1977, within the
15 Eastern District of New York, the defendant Caledonia
16 Morales, and one Anna Mendez, did knowingly and un-
17 lawfully possess, with intent to distribute, a quantity
18 of heroin hydrochloride, a schedule one narcotic control
19 substance, in violation of Title 21, United States Code,
20 Section 841(a)(1) and Title 18 United States Code,
21 Section 2.

22 The statutes alleged to have been violated in
23 the indictment is Section 841(a)(1) of Title 21 of
24 the United States Code, which reads in pertinent part,
25 "That it shall be unlawful for any person knowingly or

1
2 intentionally to possess, with intent to distribute,
3 a controlled substance in schedule one," which schedule
4 includes heroin. The indictment also charges a violat-
5 ion of the so-called aiding and abetting section,
6 Section 2 of Title 18, which provides, "That whoever
7 commits an offense against the United States or aids,
8 abets, counsels, commands, induces or procures its
9 commission is punishable as a principal. Whoever wilfully
10 causes an act to be done which, if directly performed
11 by him or another, would be an offense against the
12 United States, is punishable as a principal."

13 The essential elements of the crime charged
14 in the indictment which must be proven beyond a reasonable
15 doubt are, one, that the defendant possessed heroin as
16 alleged. Two, that the defendant knowingly and
17 intentionally possessed the same, and, three, that
18 the defendant possessed the same with intent to distribute
19 the same as alleged.

20 The law recognizes two kinds of possessions;
21 actual possession and constructive possession.

22 A person who knowingly has direct physical
23 control over a thing at a given time is then in actual
24 possession of it. A person who, although not in actual
25 possession, knowingly has both the power and intention

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2 at a given time to exercise dominion, or control over
3 a thing, either directly or through another person or
4 persons, is then in constructive possession of it.

5 The law recognizes, also, that possession may
6 be sole or joint. If one person, alone, has actual
7 or constructive possession of a thing, possession is
8 sole. If two or more persons share actual or constructive
9 possession of the thing, possession is joint.

10 You may find that the element of possession as
11 that term is used in these instructions is present if
12 you find beyond a reasonable doubt that the defendant
13 had actual or constructive possession, either alone
14 or jointly with others.

15 An act or failure to act is knowingly done if
16 done voluntarily and intentionally and not because of
17 accident, mistake or other innocent reason.

18 The defendant's contention is she did not know
19 that there were narcotics or heroin in the baggage
20 which she retrieved from the carousel at LaGuardia Air-
21 port. And, that the second element of the crime has
22 not been proven beyond a reasonable doubt, namely,
23 that she knowingly and intentionally possessed the
24 heroin.

25 Now with respect to Section 2, which is the

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2 aiding and abetting section, it provides, "Whoever
3 commits an offense against the United States or aids,
4 abets, counsels, commands, induces or procures its
5 commission is punishable as a principal. And, whoever
6 wilfully causes an act to be done, which if directly
7 performed by him or another, would be an offense against
8 the United States, is punishable as a principal."

9 The guilt of a defendant may be established with-
10 out proof that the accused personally did every act
11 constituting the offense charged. In other words,
12 every person who wilfully participates in the commission
13 of a crime may be found guilty of that offense.

14 Participation is willful, if done voluntarily and
15 intentionally and with a specific intent to do some-
16 thing that the law forbids, or with the specific intent
17 to fail to do something that the law requires to be
18 done. That is to say, with bad purpose to either
19 disobey or disregard the law.

20 In order to aid and abet another to commit a
21 crime, it is necessary that the accused wilfully
22 associated herself with the criminal venture and wil-
23 fully participated in it as she would in something she
24 wishes to bring about. That is to say, she wilfully
25 by some act or omission of hers attempted to make the

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2 criminal venture succeed.

3 An act or omission is willfully done if done
4 voluntarily and intentionally, and with the specific
5 intent to do something the law forbids, or with the
6 specific intent to fail to do something the law requires
7 to be done. That is to say, with bad purpose, either
8 to disobey or to disregard the law.

9 Of course, you may not find the defendant guilty
10 unless you find beyond a reasonable doubt that every
11 element of the offense as defined in these instructions
12 was committed by some person or persons and that
13 the defendant participated in its commission.

14 Mere presence at or near the scene of a crime
15 and knowledge that the crime is being committed is not
16 sufficient to establish the defendant aided and abetted
17 the crime, unless you find beyond a reasonable doubt
18 that the defendant was a participant and not merely
19 a knowing spectator.

20 An act is done knowingly if done voluntarily
21 and intentionally and not because of mistake, or acci-
22 dent or any other innocent reason. The purpose of
23 adding the word "knowingly" was to insure no one would
24 be convicted of an act done because of mistake, or
25 accident or other innocent reason.

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2 An act is done willfully if done voluntarily and
3 intentionally, that is to say, intentionally with
4 bad purpose and not by mistake, accident, unintention-
5 ally or in good faith.

6 Now, knowledge and intent ordinarily may not
7 be proved directly because there is no way of fathoming
8 or scrutinizing the operations of the human mind.
9 But, you may infer a defendant's knowledge and intent from
10 the surrounding circumstances. You may consider any
11 statement made and done or omitted by a defendant and
12 all other facts and circumstances in evidence which
13 indicate her state of mind.

14 There is evidence in this case, or at least the
15 Government claims that there is evidence in this case,
16 that the defendant participated in the fabrication of
17 a document intended to mislead the investigative
18 authorities. If you find beyond a reasonable doubt that
19 this document was spurious or false, and if you find
20 beyond a reasonable doubt that the defendant participated
21 in the making of it, you may consider that fact as
22 probative of the defendant's guilt.

23 The fabrication of false documentary evidence
24 has from the earliest time been treated as evidence
25 of guilt. Similarly, if you find beyond a reasonable

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2 doubt that the defendant used a name other than her own
3 in order to avoid subsequent identification, that would
4 be a fact from which you may, but need not, if you
5 do not wish to do so, infer a consciousness of guilt
6 on her part.

7 The fact of knowledge may be sustained by
8 direct or circumstantial evidence, just as any other
9 fact in the case. One may not willfully and intentionally
10 remain ignorant of a fact important and material to her
11 conduct, and thereby, escape punishment. The defendant's
12 lack of knowledge is not available to the defendant,
13 if the jury finds from all of the evidence beyond a
14 reasonable doubt that the defendant had a conscious
15 purpose to avoid enlightenment by closing her eyes to
16 the facts which should have caused her to investigate.

17 Statements and arguments of counsel are not
18 evidence in the case unless made as an admission or as a
19 stipulation of fact. When the attorneys on both sides
20 stipulate or agree as to the existence of a fact,
21 you must unless otherwise instructed, accept the
22 stipulation as evidence and regard that fact as
23 having been proved. There were a number of facts which
24 were stipulated to in this case; those stipulations
25 were marked in evidence, and of course, if you wish to

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2 se e them you may request them.

3 The Court may take judicial notice of certain
4 facts or events. I believe I only took judicial notice
5 of the fact that a magistrate in this Court were jud-
6 icial officers, which, of course, is a fact. When the
7 Court is prepared to take judicial notice of some
8 fact or event, you may accept the Court's preparedness
9 as an admission of evidence and regard it as proof
10 of the fact.

11 In other words, it is a judicial acceptance of
12 fact, but you are not required to accept that, since
13 you are the sole judges of the facts.

14 Unless otherwise instructed, the evidence in
15 the case always consists of the sworntestimony of
16 the witnesses, regardless of who may have called them,
17 and also exhibits received in evidence, regardless of
18 who may have produced them, and all facts that may have
19 been admitted or stipulated to, and all facts and
20 events which may have been judicially noted, and all
21 applicable presumptions as stated in these instructions.

22 Any evidence as to which an objection was
23 sustained by the Court, and any evidence ordered
24 stricken by the Court, must be entirely disregarded.
25 Evidence includes, however, what is brought out from the

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2 witnesses on cross-examination as well as what is
3 testified to on direct examination.

4 Unless otherwise instructed, anything you may
5 have seen or heard outside the courtroom is not evidence
6 and must be entirely disregarded.

7 You are to consider only the evidence in the
8 case and your verdict is to be based on the evidence
9 only, but in your consideration of the evidence, you
10 are not limited to the bald statements of the witnesses.
11 In other words, you are not limited to solely to what
12 you see and hear as the witnesses testify.

13 You are permitted to draw from facts which you find
14 have been proved, such reasonable inferences you feel
15 are justified in light of your experience and common
16 sense.

17 Inferences are deductions or conclusions which
18 reason and common sense lead the jury to draw from
19 facts which have been established by the evidence in
20 the case. If a lawyer asks a witness a question which
21 contains assertions of fact, you may not consider the
22 assertion as evidence of that fact. The lawyers state-
23 ments are not evidence.

24 Evidence relating to any statement, or act or
25 omission claimed to have been made or done by a defendant

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2 outside of the Court and after a crime has been committed,
3 should always be considered with caution and weighed
4 with great care, and all such evidence should be dis-
5 regarded entirely unless the evidence in the case
6 convinces the jury beyond a reasonable doubt that the
7 statement, and/or omission was knowingly made or done.

8 A statement or act or omission is knowingly
9 made and done if done voluntarily and intentionally,
10 and not because of mistake, accident or other innocent
11 reason. In determining whether any statement or act
12 or omission claimed to have been made by a defendant
13 outside of the Court and after a crime has been committed
14 was knowingly made or done, the jury should consider
15 the age, sex, training, education, occupation, and
16 physical and mental condition of the defendant and
17 her treatment while in custody or under interrogation,
18 as is shown by the evidence in the case, and also
19 consider all other circumstances in evidence surrounding
20 the making of the statement or act or omission, in-
21 cluding whether before or after the statement or act
22 or omission was made or done, the defendant knew or
23 had been told and understood she was not obligated or
24 required to make or do the statement, act or omission
25 claimed to have been made or done by her.

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2 That any statement or act or omission which she
3 might make or do could be used against her in court,
4 that she was entitled to the assistance of counsel
5 before making any statement, either orally or in writing,
6 or before doing any act or omission, that if she started
7 to say something she might stop at any time, and if
8 she was without money or means to retain counsel of
9 her own choice, an attorney would be appointed to advise
10 and represent her, free of cost or obligation.

11 If the evidence in the case does not convince
12 you beyond a reasonable doubt that a statement was
13 made voluntarily and intentionally, you should disregard
14 it entirely. On the other hand, if the evidence in
15 the case does : prove beyond a reasonable doubt that
16 the statement was in fact voluntarily and intentionally
17 made by the defendant, you may consider it as evidence
18 in the case against the defendant, a voluntarily and
19 intentionally made statement.

20 You, as jurors, are the sole judges of the
21 credibility of the witnesses and the weight their
22 testimony deserves. You should carefully scrutinize
23 all of the testimony given the circumstances under
24 which each witness has testified, and every matter in
25 evidence which tends to show whether a witness is worthy

of belief.

Consider each witness' intent, motive and state of mind; the demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which she has testified and whether he or she impresses you as having an accurate recollection of these matters.

Consider, also, any relation each witness may bear to either side of the case, the manner in which each witness may be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or transaction may hear and see it differently, and innocent recollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or unimportant detail, and whether the discrepancy resulted from innocent error or intentional falsehood.

After making your own judgment, you will give

1 the testimony of each witness such credibility, if any,
2 as you may think it deserves.

3 The testimony of a witness may be discredited or
4 impeached by showing that he or she previously made
5 statements that are inconsistent with his or her present
6 testimony. It is the province of the jury to determine
7 the credibility, if any, to be given the testimony of
8 a witness who has been impeached.

9 If a witness is shown knowingly to have testi-
10 fied falsely concerning any material matter, you have
11 a right to distrust such witness' testimony in other
12 particulars, and you may reject all of the testimony
13 of that witness or give it such credibility as you
14 may think it deserves.

15 The law does not compel a defendant in a
16 criminal case to take the witness stand and testify,
17 and no presumption of guilt may be raised, and no
18 inferences of any kind may be drawn from the failure
19 of the defendant to testify. As stated before, the law
20 never imposes upon a defendant in a criminal case the
21 burden or duty of calling any witnesses or producing
22 any evidence.

23 It is the duty of the attorneys on each side
24 of the case to object when the other side offers
25 testimony or offers evidence which the attorney believes

1
2 is not properly admissible. You should not show pre-
3 judice against the attorney or his client because the
4 attorney made an objection. Upon allowing the testimony
5 or other evidence to be introduced over the objections
6 of an attorney or his client, because -- I'm sorry.

7 Upon allowing the testimony or other evidence to
8 be introduced over the objection of an attorney, the
9 Court does not, unless specifically stated, indicate
10 any opinion as to the weight or affect of such evidence.
11 As stated before, you are the sole judges of the
12 credibility of all witnesses and the weight and affect
13 of all evidence.

14 When the Court has sustained an objection to
15 a question addressed to a witness, the jury must
16 disregard the question entirely and may draw no
17 inferences from the wording or speculate what the
18 witness would have said if he or she had been permitted
19 to answer any question.

20 The fact that the Court has asked one or more
21 questions of a witness for clarification or admissib-
22 ility of evidence purposes, is not to be taken by
23 you in anyway as indicating that the Court has any
24 opinion as to the guilt or innocence of the defendant
25 in this case, and you are to draw no such inference

1
2 therefrom. That determination is up to you, and to
3 you alone, based upon all of the facts in the case and
4 the applicable law in these instructions.

5 Now, you are here to determine the guilt or
6 innocence of the defendant, Ms. Morales from the evidence
7 in the case. You are not called upon to return a verdict
8 as to the guilt or innocence of any other person or
9 persons. Well, if the evidence in the case convinces
10 you beyond a reasonable doubt of the guilt of the accused,
11 you should so find, even though you might believe one
12 or more other persons are guilty. But, if any reasonable
13 doubt remains in your minds after impartial consideration
14 of all the evidence in the case, it is also your
15 duty to find the accused not guilty.

16 The verdict must represent the considered judgment
17 of each juror. In order to return a verdict, it is
18 necessary that each juror agree thereto. Your verdict
19 must be unanimous.

20 It is your duty as the jurors to consult with one
21 another, and to deliberate with a view to reaching a verdict,
22 and if you can do so without violence to individual
23 judgment. Each of you must decide the case for yourself,
24 but do so only after an impartial consideration of
25 the evidence in the case with your fellow jurors.

1
2 In the course of your deliberations do not hesi-
3 tate to reexamine your own views and change your opinion
4 if convinced it is erroneous, but do not surrender your
5 honest conviction as to the weight or effect of the
6 evidence, solely because of the opinion of your fellow
7 jurors, or for the mere purpose of returning a verdict.
8 Remember, at all times you are not partisans, you are
9 judges, judges of the facts. Your sole interest is
10 to seek the truth from the evidence in the case.

11 There is nothing peculiarly different in the
12 way a jury considers the evidence in a criminal case
13 from that in which all reasonable persons treat any
14 question, depending upon the evidence presented to them.
15 You are expected to use your good common sense, consider
16 the evidence in the case, for only those purposes for
17 which it has been admitted, and give it a reasonable
18 and fair construction in the light of your own common
19 knowledge of the natural tendencies and inclinations as
20 human beings.

21 If the defendant be proved guilty beyond a
22 reasonable doubt, say so. If not so proved guilty, say
23 so.

24 If you fail to find beyond a reasonable doubt
25 that the law has been violated, you should not hesitate

1
2 for any reason to return a verdict of acquittal; but
3 on the other hand, if you should find the law has been
4 violated as charged by this defendant, you should not
5 hesitate because of sympathy or any other reason to
6 render a verdict of guilty as a clear warning that
7 a crime of this character may not be committed with
8 impunity. The public is entitled to be assured of
9 this.

10 If any reference made by the Court or by counsel
11 to matters of evidence does not coincide with your
12 own recollection, it is your recollection which controls
13 during your deliberations.

14 The punishment provided by law for the offense
15 charged in this indictment is a matter exclusively with-
16 in the province of the Court, and should never be
17 considered by the jury in any way in arriving at an
18 impartial verdict as to the guilt or innocence of the
19 accused.

20 Upon retiring to the jury room, the lady sitting
21 closest to the door, juror number one, will act as
22 your forelady unless she chooses not to do so. If she
23 chooses not to do so, you should then elect a foreman
24 or a forelady from amongst your number. The fore-
25 person will preside over your deliberations and will be
your spokesman here in Court.

1
2 If it becomes necessary during your deliberations
3 to communicate with the Court, you may send a note, signed,
4 by way of a deputy marshal who will be stationed out-
5 side your door, by way of your forelady or fore-
6 person, or by one or more members of the jury. No
7 member of the jury should, however, ever attempt to
8 communicate with the Court by any means other than by
9 a signed writing, and the Court will never communicate
10 with any member of the jury on any subject touching upon
11 the merits of the case other than in writing, or orally
12 here in open Court.

13 You will note from an oath which will be taken
14 shortly by the deputy marshals that they too, as well
15 as all other persons, are forbidden to communicate in any
16 way or manner with any member of the jury, on any subject
17 touching upon the merits of the case.

18 Now the following is very important, and bear it
19 in mind; you are never to reveal to any person, not even
20 to me the Court, how the jury stands numerically or
21 otherwise on the question of the guilt or innocence
22 of the accused, until you have reached a unanimous verdict.
23 In other words, do not send me, and I repeat, do not
24 send me a note stating that we stand five to five or
25 six to four, or eleven to one, one way or the other.

1
2 If you do that, sending me a note and indicating
3 numerically how you stand, we might well have to declare
4 a mistrial and retry the whole case.

5 When, if and as you reach a unanimous verdict,
6 you write me a note saying, "We have reached a unanimous
7 verdict", and do not tell me what it is. You announce
8 that here in open court. If, and I sincerely hope
9 the occasion doesn't arise, you have reached an im-
10 pass which you feel is an unresolvable impass, you
11 write me such a note saying, "We're unable to reach
12 a verdict, we have reached an impass", but at that
13 point don't tell me what the situation is,

14 Those are the instructions, ladies and gentlemen,
15 of the Court. I will have a brief conference with the
16 attorneys, then you will be recalled and the alternates
17 will be discharged, and then and only then may you begin
18 your deliberations. In this brief recess, don't discuss
19 the case. The jury is excused.

20 (Jury excused from the courtroom.)

21 THE COURT: All right, Mr. Epstein?

22 MR. LEVIN-EPSTEIN: Judge, your Honor, I have
23 two requests to the Court in addition to the charge
24 which you gave.

25 Let me briefly preface that by saying the charge

1
2 that you gave is satisfactory and I merely have two
3 requests, additional requests in light of remarks made
4 by my opponent during his summation, of which I was not
5 aware and did not anticipate when I prepared the request
6 to charge.

7 I believe that Mr. Lieber implied, or in fact
8 stated to the jury, that there was the possibility here
9 that the defendant Morales thought that they may have
10 been marijuana or some other contraband drug in the
11 bag, in which case they must acquit her. That is not
12 the law. In fact, my understanding of the law is as
13 long as she felt, where the jury found beyond a reasonable
14 doubt, she knew that there was some sort of contraband,
15 she didn't have to know the chemistry of it. If, in
16 fact, clearly she did not the proper name being heroin-
17 hydrochloride, as compared to brown Mexican or Mexican
18 brown, she is still no less guilty of the crime than
19 if she thought it was marijuana.

20 In fact, it is not necessary under the law for
21 us to prove what it was that she had knowledge of specifi-
22 cally, rather she had knowledge that she was doing
23 something illegal.

24 Beyond that, your Honor, in light of Mr. Lieber's
25 remarks during his summation to the jury, I request a

1 a curative instruction at this point, to the effect
2 that there is no evidence in the case that she had any
3 knowledge that it was anything other than heroin. In
4 fact, the implication that is given to the jury is that
5 although there is no evidence being put on by the de-
6 fendant, and I don't suggest for a moment that the
7 rule of Brittem-California should be advocated in any
8 way, but the fact of the matter is there is no evidence
9 in this case, except that she thought it was-- rather
10 knew that it was heroin.

11 I am not suggesting that the language be used
12 by the Court, but I do appreciate the difficulty such
13 language may bring with it, but I would ask the Court
14 to charge that there is no evidence in the case that
15 she thought it was anything other than heroin, which
16 is a clear implication by --

17 THE COURT: No, no; I can't do it in your last
18 language. I could, perhaps, do it first, in the first
19 way, but in the last way it might be a tantamount to
20 putting the burden on the defendant to testify here,

21 MR. LEVIN-EPSTEIN: May I suggest then, and I am
22 aware of the problem, it is always a difficult problem
23 in the case where the defendant chooses not take the
24 stand, but may I suggest then, your Honor, in that
25 keeping with the suggestion of the Second Circuit in
numerous situations such as this, that you give the

1 charge in substantially the language which I suggested,
2 but right on the heels of that, again advise them there
3 is no obligation under any circumstances for the
4 defendant to put an iota of evidence of any kind. She
5 merely has to sit mute.

6 THE COURT: I think it will be sufficient if I
7 say it is not necessary that the Government prove
8 knowledge of the specific narcotic involved, period;
9 if she knew that she was carrying narcotics, and she
10 knowingly and wilfully possessed the same with intent
11 to distribute as I have defined it in these instructions,
12 that should be sufficient.

13 MR. LEVIN-EPSTEIN: And that it doesn't make a
14 difference whether it was heroin or not.

15 MR. LIEBER: Your Honor, respectfully, marijuana
16 is not considered a narcotic.

17 THE COURT: We are not going to discuss marijuana,
18 I am just going to say narcotics, period.

19 MR. LEVIN-EPSTEIN: Very well, your Honor.

20 THE COURT: I am not going to go into a definition
21 of what does and doesn't constitute a narcotic.

22 MR. LIEBER: Can I request the charge, since the
23 United States Government has requested a charge orally,
24 your Honor?

25 THE COURT: You may make the request, I don't

1 know if I will grant it.

2 MR. LIEBER: Can I ask for the charge that mere
3 possessioaf the bag, and mere knowledge that she had
4 a bag, does not mean that there is knowledge that ---

5 THE COURT: I have got that covered in the mere
6 presence at the scene of crime. I won't repeat it.

7 MR. LIEBER: What I am saying, is merely possess-
8 ion --

9 THE COURT: As I said, I covered that in my initial
10 charge.

11 MR. LIEBER: Thank you.

12 THE COURT: Bring in the jury.

13 MR. LEVIN-EPSTEIN: Your Honor, I will take steps,
14 I know it's your practice, we will have one of the
15 indictments ready, if you wish.

16 THE COURT: It's up to them, if they want it.

17 (Jury seated in the jury box.)

18 THE COURT: All right, ladies and gentlemen;
19 the Government has requested a short additional instruct-
20 ion to which I believe they're entitled and that is,
21 that the burden is not on the Government to prove know-
22 ledge of a specific narcotic. They don't have to prove
23 knowledge of heroin as such, it's sufficient to prove
24 possession with intent to distribute a narcotic,
25 that is sufficient, and I so instruct you.

1 With that additional instruction, I think that
2 completes the instructions of the Court.

3 Now, the alternate jurors your time has come.
4 I realize that it's been a very short trial and you don't
5 get to participate in the actual deliberations which
6 is left up to the other twelve. That doesn't mean
7 you haven't performed a valuable service. If one or
8 more of the jurors had gotten sick, during the course
9 of the trial or something happened at home and they
10 weren't able to make it, you would have filled right
11 in. Normally we would use one or more alternate jurors,
12 but this was a very short trial and so we didn't need
13 your services for the deliberations.

14 You do go with the thanks of the Court for your
15 attention to the case on these two days. You should
16 report back to the central jury part and let them know
17 that you are done here, and I don't know whether they
18 will have any further work for you at that time. If
19 you have anything in the jury room, please pick it up
20 and please take it out or else otherwise go downstairs.

21 (Alternates excused.)

22 THE COURT: All right, marshals.

23 (The Court room deputy swears in two marshals.)

24 THE COURT: All right, ladies and gentlemen,
25 the first order of business is for the marshal

1 to take a luncheon order from you and get that out of
2 the way. They will send out for lunch and it will take
3 about an hour to arrive.

4 I will let the attorneys go to lunch between
5 one and two; that means if you have any questions that
6 you want answered, try to schedule them either before
7 one or after two, because the attorneys might not be here
8 for any questions, as well as the Court. So, they
9 will take your luncheon orders and you may begin your
10 deliberations.

11 If you have any questions, remember, write them
12 out and send them in here before one o'clock, and then
13 you should go right on deliberating as soon as you
14 finish your lunch, and then hold any questions that you
15 might have until after two o'clock.

16 You may not discuss the case.

17 (Jury excused.)

18 MR. LIEBER: Respectfully your Honor, I respect-
19 fully request permission to except the charge.

20 THE COURT: In what respect?

21 MR. LIEBER: Failure to make the charge which
22 I have requested before of your Honor.

23 THE COURT: About mere possession of the bag?

24 MR. LIEBER: Yes, your Honor.

25 THE COURT: I think I covered it when I said

1 mere presence at the scene of the crime does not
2 constitute proof of guilt, plus I think all other
3 aspects of the charge, I think, fairly covers it.

4 MR. LIEBER: Yes, your Honor.

5 MR. LEVIN-EPSTEIN: Your Honor, we have from one
6 to two for lunch?

7 THE COURT: Yes.

8 MR. LEVIN-EPSTEIN: Do we wait in the building
9 until then?

10 THE COURT: Yes; don't leave the building until
11 one o'clock.

12 MR. ~~LEVIN~~-EPSTEIN: I believe I will be in the
13 Grand Jury for a period of time, but my secretary
14 will know where to reach me. If it please the Court,
15 what do you want us to do with the exhibits?

16 THE COURT: Leave them with Mr. Nims.

17 MR. LEVIN-EPSTEIN: I prefer not to leave the
18 narcotic exhibits.

19 THE COURT: I would prefer you to.

20 MR. LEVIN-EPSTEIN: Well, if Mr. Nims is willing
21 to take possession of it, and sign for it, in that way,
22 then I have no objection to it, but it is a narcotic.

23 THE COURT: What are you going to do?

24 MR. LEVIN-EPSTEIN: Put it back in the vault.

25 THE COURT: And then take a half hour to get it back

1 here?

2 MR. LEVIN-EPSTEIN: Five minutes.

3 THE COURT: That's what you said this morning and
4 it took a full half hour for the agent to get it down
5 here the last time.

6 MR. LEVIN-EPSTEIN: He wasn't here, Judge.

7 THE COURT: He was too.

8 MR. LEVIN-EPSTEIN: Well then, I will make every
9 effort I can to get it quickly, unless Mr. Nims is
10 willing to sign for it, your Honor, unless there's a
11 direct order of the Court, of course.

12 THE COURT: I really don't see what the risk is.

13 MR. LEVIN-EPSTEIN: Your Honor, perhaps you are
14 right and I agree with you, but we have an over abund
15 ance of caution about raw heroin being not within the
16 law, and even for just custodial purposes, in light
17 of the most recent developments --

18 THE COURT: All right. Let the agent sit here
19 with it in his possession.

20 MR. LEVIN-EPSTEIN: He has to be somewhere else.

21 THE COURT: Then get another agent and have him
22 sit here.

23 MR. LEVIN-EPSTEIN: I'll try to get an agent.

24 THE COURT: And leave it in the courtroom here
25 with me. I don't see why the jury should be kept wait-

1 ing for a half hour because it must be in and out of
2 the vault.

3 MR. LEVIN-EPSTEIN: I don't understand, particularly,
4 your Honor, since the narcotics may not go to the jury.

5 THE COURT: Well, if they want to look at it, am
6 I to let them in this case, I will make a controlled
7 delivery.

8 MR. LEVIN-EPSTEIN: Whatever your Honor says.

9 THE COURT: Leave it with an agent here unless
10 you can get another agent to guard it.

11 MR. LEVIN-EPSTEIN: Can he use the phone, your
12 Honor?

13 THE COURT: Call from the witness room. We have
14 another case which is going to start herenow.

15 MR. LEVIN-EPSTEIN: For the record, can we leave
16 it with Mr. Nims?

17 THE COURT: Mr. Nims apparently doesn't want it.

18 THE CLERK: At one o'clock I would have to put
19 it in the vault anyway, I suppose.

20 THE COURT: He thinks there is a possible
21 French Connection.

22 MR. LEVIN-EPSTEIN: That's what we are concerned
23 with also, Judge, obviously.

24 THE COURT: Then leave it with the agent.

25 MR. LEVIN-EPSTEIN: Suppose I leave it with the

1 agent, who is available to come in as quickly as possible.

2 THE COURT: Have him stay here. You don't under-
3 stand English; you want to argue it, and that's the
4 end of it.

5 MR. LEVIN-EPSTEIN: Yes, your Honor.

6 Your Honor, the marshal is accepting custody
7 of the narcotics; any objection to that?

8 THE COURT: No, if they're willing to take it.

9 MR. LEVIN-EPSTEIN: Perhaps Mr. Nims can go back
10 there, if the door is open or something.

11 THE COURT: Send the agent back there with it.
12 Knock on the door and he will come out.

13 (Short recess was held.)

14 THE COURT: We have a note from the jury; the
15 question is, would the defendant be equally guilty as
16 possession of any other narcotic as heroin; would
17 marijuana be included. Well, the answer to the first
18 would be it's not a question of that at all, the charge
19 is that is she guilty of possession with intent to
20 distribute heroin. As such, the question is whether
21 her knowledge, whether she had knowledge that she was
22 transporting a narcotic --

23 MR. LEVIN-EPSTEIN: That is sufficient, your Honor.

24 THE COURT: That is sufficient, and now marijuana,
25 that however is not included in the --

1 MR. LEVIN-EPSTEIN: It is not included in that
2 schedule, Judge.

3 THE COURT: But it is included as a narcotic?

4 MR. LEVIN-EPSTEIN: As a matter of chemistry,
5 not considered a narcotic drug. However, it is considered
6 a controlled substance and, of course, knowledge re-
7 quired to know about marijuana is precisely the same
8 knowledge as would be for heroin.

9 THE COURT: It is a controlled substance?

10 MR. LEVIN-EPSTEIN: So the answer is, "Yes".

11 MR. LIEBER: Judge, I take issue with that. I
12 believe it is a schedule ---

13 THE COURT: That is not important. I am going
14 to tell them that while it may legally not be a nar-
15 cotic, it is a controlled substance; it is not included
16 in schedule one, I will tell them that much.

17 MR. LEVIN-EPSTEIN: I would ask you to also in-
18 clude, if they found that she has any sort of knowledge,
19 it's sufficient.

20 THE COURT: All right.

21 MR. LIEBER: Your Honor, will you tell the jury
22 that it's not a schedule one drug?

23 THE COURT: I will tell them that it is not a
24 schedule one, and it's on another schedule.

25 MR. LEVIN-EPSTEIN: Is the Court going to charge

1 that the knowledge is precisely the same?

2 THE COURT: Yes.

3 MR. LEVIN-WPSTEIN: Very well.

4 THE COURT: Bring in the jury.

5 (Jury seated.)

6 THE COURT: Well now, your recollection is going
7 to control as to the evidence that pertains to these
8 four questions that you have asked in two notes to the
9 Judge. The first two questions I have discussed with
10 the attorneys, and the last two which were just handed
11 to me as you came out the door, so I have not discussed
12 them with the attorneys, however, I believe I can
13 answer them.

14 The first two questions apparently arise out of
15 my last instruction, perhaps some confusion may exist
16 in our last instructions to you. Bear in mind, again,
17 here your recollection, it's your recollection that
18 controls, but it my recollection that there was no
19 proof that there was any other narcotic involved in this
20 case other than heroin. The stipulated fact is the
21 material involved was found in the suitcase was heroin
22 and it wasn't marijuana or any kind of narcotics.

23 Now, it's your recollection that controls, but
24 my recollection is that it is stipulated, it was entered
25 into between the parties and agreed to, and you can look

1 at that stipulation if you wish.

2 However, the last instruction I gave to you was,
3 with respect to the knowledge on the part of the de-
4 fendant. Knowledge I said was that it wasn't necessary
5 that the Government prove that she knew it was heroin
6 as distinguished from some other narcotics.

7 In other words, knowledge on her part that
8 she was carrying an illegal narcotics in that bag or
9 possessing it with intent to distribute it rather, was
10 sufficient.

11 Your next question is, would marijuana be
12 included as chemical matter, and I am not that sure
13 of this, but I think marijuana maynot be strictly a
14 narcotic. However, it is a controlled substance;
15 it is not listed in the control, in the same control
16 schedule as heroin, as heroin is in schedule one and
17 marijuana is something like schedule four. It is a
18 controlled substance, while it may not be particularly
19 a narcotic, it is a controlled substance.

20 Now my question is, is the defendant married
21 and/or on welfare. You are going to have to rely on
22 your recollection or have any portion of the testimony
23 read back that you wish to have read back on that
24 subject. You will have to rely on your recollection.

25 If you feel that it is material, of course, whether

1 it is material or not, I am not going to comment upon
2 it, at this point.

3 The next question is, we would like to see the
4 suitcase, which, of course, you may and I will send it
5 in to you with the deputy marshals because it is marked
6 as an exhibit, plus all of the contents thereof. Again,
7 as a follow-up to that question, you want to know who
8 the rest of the clothes belonged to. That you will have
9 to rely on your own recollection of the evidence. We
10 can't reopen the case at this point to an individual
11 question.

12 My recollection is, and it is your recollection
13 which controls, and I caution you again, my recollection
14 is that at least one blouse belonged to this defendant.
15 Beyond that, I don't know what it was, but my recollection
16 is that was it. I don't know if there was any proof as
17 to the balance of the clothing. All right, you may be
18 excused.

19 (Jury excused.)

20 * * * * *

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CERTIFICATE OF SERVICE

September 9, 1972

I hereby certify that a copy of this [REDACTED]
appendix has been mailed to the United States Attorney
for the Eastern District of New York.

Barry Bassis